Senate Bill No. 686

CHAPTER 899

An act to amend Section 674.6 of, to add Section 674.9 to, and to add Chapter 5 (commencing with Section 11890) to Part 3 of Division 2 of, the Insurance Code, and to amend Section 14126.02 of the Welfare and Institutions Code, relating to long-term care facilities.

[Approved by Governor October 12, 2003. Filed with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 686, Ortiz. Long-term care facilities: insurance: Medi-Cal reimbursement.

Existing law provides for the licensure and regulation of health facilities, including long-term health care facilities, by the State Department of Health Services.

Existing law provides for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services.

Existing law requires an insurer to notify the Department of Insurance at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of commercial liability insurance.

This bill would require an insurer issuing policies of liability insurance to long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly, to notify the Department of Insurance at least 90 days prior to the date it intends to cease, withdraw, or substantially withdraw from offering liability policies to those facilities.

The bill would require each insurer writing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly, by a date set by the Insurance Commissioner, but in any event no later than July 1 of each calendar year, to report to the Insurance Commissioner specified information regarding policies for those facilities. This bill would establish priorities for the department and the Insurance Commissioner concerning the collection of information reported by the insurers.

This bill would also make the above information collected by the department subject to specified disclosure protections.

Existing law generally regulates the insurance industry.

This bill would allow the Insurance Commissioner to authorize the formation of a market assistance program or a risk pooling arrangement, as specified, to assist in securing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly if the Insurance Commissioner finds, after a public hearing, that the liability insurance is not readily available in the voluntary insurance market and that the public interest requires its availability.

The bill would also allow the Insurance Commissioner to order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, for the purpose of providing, for a specified period, a market for liability insurance on a self-supporting basis, without subsidy from association members.

This bill would authorize the commissioner to develop appropriate standards and regulations to implement the market assistance program, risk pooling arrangement, or joint underwriting association.

This bill would provide that the above provisions shall only be implemented if funds for their purposes are available in the Insurance Fund.

Existing law also provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services.

Existing law requires the department to implement, for purposes of reimbursement under the Medi-Cal program, a facility-specific ratesetting system by August 1, 2005, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities.

This bill would instead require the department to implement the system by August 1, 2004, and would, in addition, make implementation subject to the availability of federal or other funds.

The people of the State of California do enact as follows:

SECTION 1. Section 674.6 of the Insurance Code is amended to read:

674.6. (a) No insurer issuing policies of insurance subject to Section 674.5 or 675 shall cease to offer any particular line of coverage without prior notification to the commissioner.

(b) Except as provided in Section 674.9, an insurer shall notify the department at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of (1) commercial liability insurance, (2) any

insurance defined in Section 660 or 675 when coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, (3) any other insurance defined in Section 660, or (4) any insurance issued to an individual or individuals covering a risk not arising from a business or commercial activity. Upon receipt of the notice, the commissioner may request and review additional information, as deemed necessary, and investigate the market conditions to determine whether that insurance may become not readily available in the voluntary insurance market as a result of the withdrawal.

(c) For purposes of this section, ''intent to substantially withdraw'' means an insurer's intent to nonrenew in excess of 50 percent of its current policyholders in the line of coverage upon their next renewal.

(d) The commissioner shall adopt appropriate rules, regulations, and standards for purposes of implementing this section.

(e) Any insurer that has notified the commissioner pursuant to subdivision (b) shall (1) notify the commissioner within 10 days after the date given in the withdrawal notice if the insurer does not in fact withdraw that line of insurance from the market, or (2) notify the commissioner within 10 days after reentry if the insurer reenters that line after the withdrawal.

SEC. 2. Section 674.9 is added to the Insurance Code, to read:

674.9. (a) Notwithstanding subdivision (b) of Section 674.6, an insurer issuing policies of liability insurance to long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly shall notify the department at least 90 days prior to the date it intends to cease, withdraw, or substantially withdraw from offering liability policies to those facilities or physicians.

(b) Each insurer writing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly shall, by a date to be set by the commissioner, but in any event no later than July 1 of each calendar year, report to the commissioner information specified by him or her regarding liability policies for those facilities or physicians. The information shall include, but not be limited to, the following:

(1) Whether the insurer is writing coverage for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term

health care facilities or residential care facilities for the elderly, including new and renewal policies, and the types of policies it is writing.

(2) The number and types of long-term health care facilities or residential care facilities for the elderly and beds covered.

(3) The total amount of premiums from insureds, both written and earned, during the immediately preceding five calendar years.

(4) The total number of claims received, including the amount per claim.

(5) The number of claims incurred, together with the monetary amount reserved for loss and defense and cost containment expense for the immediately preceding accident year or report year.

(6) The number of claims closed with payment during the immediately preceding five calendar years, the total monetary amount paid for loss thereon, reported by the year the claim was incurred, and the total defense and cost containment expense paid thereon, reported by the year the claim was incurred.

(7) The monetary amount paid on claims, including the amount paid per claim, during the immediately preceding five calendar years to be reported separately by the year the claim was incurred, with defense and cost containment expense paid.

(8) The number of claims closed without payment during the immediately preceding five calendar years, reported by the year the claim was incurred, and the defense and cost containment expense paid thereon.

(9) The monetary amount reserved in the annual statement for loss and defense cost containment expense for the immediately preceding calendar year for outstanding claims incurred but not reported to the insurer.

(10) The number and types of lawsuits filed against the insureds in the immediately preceding calendar year.

(11) Annualized information on investment income or loss, which shall be consistent with the reported information provided by insurers to the National Association of Insurance Commissioners.

(c) For the purposes of information collection conducted pursuant to this section, first priority shall be given by the department and commissioner to collecting and compiling information from insurers concerning long-term health care facilities and physicians providing services in those facilities, and, to the extent that departmental resources allow, secondary priority shall then be given to the collecting and compiling of information concerning residential care facilities for the elderly and the physicians who provide services in those facilities.

(d) Information that is collected for long-term health care facilities and the physicians for those facilities shall be collected, maintained,

analyzed, and reported separately from information that is collected, maintained, analyzed, and reported concerning residential care facilities for the elderly, and the physicians for those facilities.

(e) As used in this section, ''long-term health care facility'' has the same meaning as that term is defined in Section 1418 of the Health and Safety Code.

(f) As used in this section, ''residential care facilities for the elderly'' has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

(g) Information collected by the department pursuant to this section shall be deemed official information and subject to the disclosure protections of Section 1040 of the Evidence Code. Nothing in this section shall require individualized information that would identify the amount paid by a specific insurer or facility to be released. However, nothing in this subdivision shall prevent the department from preparing reports and policy recommendations based on the data collected pursuant to this section.

SEC. 3. Chapter 5 (commencing with Section 11890) is added to Part 3 of Division 2 of the Insurance Code, to read:

CHAPTER 5. MARKET ASSISTANCE PROGRAM FOR LONG-TERM HEALTH CARE FACILITY LIABILITY INSURANCE

11890. As used in this chapter:

(a) ''Long-term health care facility'' has the same meaning as that term is defined in Section 1418 of the Health and Safety Code.

(b) ''Residential care facilities for the elderly'' has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

11891. (a) If the commissioner finds after a public hearing that liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly is not readily available in the voluntary insurance market, and that the public interest requires this availability, the commissioner may authorize the formation of a market assistance program to assist in securing that insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly. The commissioner may require insurers, agents, and brokers to attend public hearings and meetings concerning either the need for a market assistance program or the organization and formation of a program. The commissioner may also assist in securing insurance for

long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly for which commercial liability insurance is not readily available by forming a risk pooling arrangement as permitted by the Federal Liability Risk Retention Act of 1986.

(b) The commissioner may develop appropriate standards and regulations to implement the market assistance program and risk pooling arrangement authorized by this section.

11892. (a) The commissioner may order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, constituting a legal entity separate and distinct from all its members. The purpose of the association shall be to provide a market for liability insurance on a self-supporting basis, without subsidy from association members.

(b) If the commissioner determines after a public hearing that liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly is readily available through the voluntary market, the association created pursuant to subdivision (a) shall cease its underwriting operations.

(c) The commissioner may develop appropriate standards and regulations to implement the joint underwriting association authorized by this section.

SEC. 4. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) (1) The department shall implement a facility-specific ratesetting system by August 1, 2004, subject to federal approval and the availability of federal or other funds, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities.

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for

skilled nursing facilities to include, but not be limited to, consideration of the following:

(A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.

(B) Facility specific case mix factors.

(C) Direct care labor based factors.

(D) Geographic or regional differences in the cost of operating facilities and providing resident care.

(E) Facility-specific cost based rate models used in other states.

(c) The department shall submit to the Legislature a status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004.

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The ratesetting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 5. Sections 1 to 3, inclusive, of this act shall only be implemented if funds for these purposes are available from the Insurance Fund.

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